IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.239 OF 2006
WITH
CIVIL APPLICATION NO.308 OF 2006

Shri Manohar B. Sachdeo. ..Appellant.

V/s.

Shri Shrikant K. Bhise & Ors. ..Respondents.

Mr.G.S.Godbole for J.S.Chandnani for appellant.

Mr.Rajiv Patil for respondent No.1.

Mr.U.G.Kerkar for respondent Nos. 2 and 3.

Mr.A.R.Lambay i/b Lambay & Co. for respondent no.5.

CORAM: A.M.KHANWILKAR,J

DATE : APRIL 21, 2006.

P.C. :

1. Heard counsel for the parties. Perused the pleadings and relevant documents placed on record.

2. I see no reason to depart from the conclusion reached by the court below in dismissing the application for interim relief during the pendency of the suit for the reasons recorded in the impugned Judgment. The Court below has rightly noted that in so far as defendant No.5 is concerned, he has purchased the property and is a bonafide purchaser for value without any notice of prior transaction.

He has taken all precaution before purchasing the property. Besides, it is noticed from the document on record that the defendant No.5 has purchased the property by registered agreement. The said agreement has been executed by the defendant No.1 for himself and on behalf of the defendant Nos.2 to 4, for which Power of Attorney has been executed in his favour. Be that as it may, suffice it to observe that as prima facie finding recorded by the lower court that the defendant No.5 is bonafide purchaser for value without notice is just, I am inclined to accept the conclusion reached by the court below that the plaintiff has failed to make out prima facie case. Hence, this appeal should fail.

3. Counsel for the appellant however, relying on the decision of the Apex Court in the case of **Smt.Chand Rani(dead) by LRs. V/s.Smt.Samal Rani(dead) by LRs. reported in AIR 1993 S.C.1742**, in particular paragraph 18, would contend that time was not the essence of contract and that the appellant has paid entire amount to the defendant No.1. All these aspects will have to be considered at the trial. As mentioned earlier, I am inclined to accept the conclusion reached by the court below that prima facie case is not made out by the plaintiff,

particularly because the defendant No.5 has purchased the property and appears to be bonafide purchaser for the value without any notice. Accordingly, this appeal is dismissed.

4. At this stage, counsel for the appellant contends that the respondent No.5/defendant No.5 may be atleast put to some terms that any transaction with regard to the suit property to be entered hereafter should be made subject to the outcome of the suit. The respondent No.5 should disclose that fact in the agreement to be entered with the prospective purchasers so that no equities are claimed by concerned parties. Counsel for the respondent No.5 however, submits that respondent No.5 has no intention to dispose of this property as the respondent No.5 has constructed Inland Container Depot on the said plot. Even so, in future, if the respondent No.5 intends to dispose of the suit property or create third party interest therein, the respondent No.5 shall put prospective purchaser or such person to notice that if such right is created, it will be subject to outcome of the suit.

5. Appeal as well as civil application disposed of on the above terms.

6. Needless to observe that the observations made in the impugned Judgment or for that matter present order are only prima facie. The trial court will decide all the issues uninfluenced by any such observations in accordance with the law.